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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 650

HARTFORD ACCIDENT & INDEMNITY COMPANY AND UNITED STATES FIDELITY & GUARANTY COMPANY, APPELLANTS,

vs.

DELTA & PINE LAND COMPANY.

APPEAL FROM THE SUPREME COURT OF MISSISSIPPI.

BRIEF FOR APPELLANT.

WM. M. HALL,
Counsel for Appellants.

INDEX.

	Page
Statement of the Case	1
Specification of Assigned Errors Relied Upon	6
Summary of Argument	7
Argument	8
Point I. There being "an interest in Mississippi" with respect to which the contract was made, if there was in truth such an interest, did not warrant the application of the Mississippi statutes to the contract	7
Point II. There was no "interest in Mississippi" in any proper sense, to control the validity of the contract	19

Cases Cited.

Ætna Life Ins. Co. v. Dunken, 266 U. S. 389, 69 L. Ed. 342	9, 14, 15, 19
Allgeyer v. Louisiana, 165 U. S. 578, 41 L. Ed. 832	8, 10
Bowen v. Interstate Business Men's Ass'n, 182 Wis. 223, 196 N. W. 229	16
Clearly v. Union Central Life Ins. Co., 143 Ky. 540, 136 S. W. 1014, 33 L. R. A. (N. S.) 881	17
Dolan v. Royal Neighbors, 123 Mo. App. 54, 100 S. W. 500	17
French v. People, 6 Colo. App. 311, 40 Pac. 463	13
Gill v. Sovereign Camp W. O. W., 209 Mo. App. 63	17
Hammond v. International Ry. Co., 116 N. Y. S. 855	13
Home Ins. Co. v. Dick, 281 U. S. 397, 74 L. Ed. 926	9, 17
Johnson v. Mutual Life Ins. Co., 180 Mass. 407, 62 N. E. 733, 63 L. R. A. 832	10, 11, 13
Lumbermen's, etc., Ins. Co. v. Kansas City, St. F. & M. R. Co., 149 Mo. 165, 50 S. W. 281	13
Matthews v. Employers Liability Assurance Corp., 111 N. Y. S. 76	20
Mutual Life Ins. Co. v. Cohen, 179 U. S. 262, 45 L. Ed. 181	13
New York Life Ins. Co. v. Head, 234 U. S. 149, 58 L. Ed. 1259	9, 13, 14, 19
New York Life Ins. Co. v. Dodge, 246 U. S. 352, 62 L. Ed. 772	9
N. Y. Ins. Co. v. Long, 177 Ky. 445, 197 S. W. 949	13
Roberts v. Modern Woodmen, 133 Mo. App. 207, 113 S. W. 726	17
Stone v. Old Colony St. Ry. Co., 212 Mass. 459, 99 N. E. 218	10
Swing v. Hill, 165 Ind. 411, 75 N. E. 658	13
U. S. Mortgage & Trust Co. v. Ruggles, 258 N. Y. 32, 179 N. E. 250	16
Union Central Life Ins. Co. v. Barnes (Ky.), 194 S. W. 339	17
Western Mass. Mutual Fire Ins. Co. v. Storage Co., 6 Pa. Super. Ct. 288	13
Western Mass. Mutual Fire Ins. Co. v. Hilton, 58 N. Y. S. 854, 42 App. Div. 52	13

Text Books Cited.

	Page
Corpus Juris, Vol. 32, p. 979, Sec. 8, p. 980, Notes 69 and 70	10
Note in 1 A. L. R. 1665, 1666	13
Supplemental Note in 32 A. L. R. 636	13

Statutes Cited.

Miss. Code, Sec. 5131	4, 6, 10, 14, 15, 18, 19
Miss. Code, Sec. 2294	2, 3, 4, 5, 14, 15, 17, 18, 19
U. S. Constitution, Art. XIV, Sec. 1	2, 5, 6
U. S. Constitution, Art. IV, Sec. 1	2, 5, 6

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(NOT YET OFFICIALLY REPORTED, BUT NOW REPORTED IN 150 So. 205.)

BRIEF FOR APPELLANT.

Statement of the Case.

In referring herein to Appellant, Hartford Accident & Indemnity Company, will be meant, the other Appellant having been merely its appeal surety below.

Appellee, plaintiff below, sued Appellant, defendant below, in the Circuit Court of Bolivar County, Mississippi, upon a fidelity bond to recover a loss sustained by Appel-

lee through the fraud committed by its Treasurer named in the Schedule of Employees annexed thereto, and Appellant defended on the ground that its undertaking in and by said bond was conditioned upon Appellee making claim upon it within fifteen months after termination of the suretyship for the defaulting employee, and that its suretyship for him was terminated December 31, 1929, and Appellee did not make claim upon Appellant until June 22, 1931, which was more than fifteen months after the termination of the suretyship, and that Appellee through its principal office at Memphis, in the State of Tennessee, had applied to Appellant through its Agency at Memphis, in that State, for this bond, rider and schedule, and Appellant through its said Agency executed and delivered it to Appellee at its office in Memphis, and that the bond was a Tennessee contract governed by the laws of Tennessee and that such condition under the law of Tennessee was valid and binding and that full faith and credit had to be given thereto in the courts of Mississippi under and in accordance with the requirements of Article IV, Section 1; Article I, Section 10 and Section 1 of the Fourteenth Amendment of the Constitution of the United States (R. 1-18, R. 18-19). Appellee demurred to Appellant's plea wherein that defense was set up, on the ground that the condition in question was invalid under Section 2294 of the Mississippi Code of 1930, which declared null and void a change of the general six-year limitation of actions, and the public policy of Mississippi, and that the courts were not required to give full faith and credit in accordance with the requirements of the Constitution as contended in Appellant's plea (R. 20).

Appellee's declaration in the case showed that Appellee was incorporated under the laws of Mississippi and at the time of the suit had its principal place of business in

the town of Scott, Bolivar County, Mississippi; and that Appellant was incorporated under the laws of Connecticut with its principal place of business at Hartford, in that State, and was qualified and authorized to do business in the State of Mississippi. The schedule attached to the bond and made part of the declaration (R. 2), showed the executive officers, President, Vice-President, Treasurer and Secretary, to be located at Memphis, in Tennessee. The schedule also showed various employees in positions at various places in the State of Mississippi (R. 13, 16). The declaration further showed that the losses on account of its Treasurer occurred in Bolivar County, Mississippi (R. 9). Appellant's undertaking in and by the bond was to pay such pecuniary loss as the Appellee should sustain of money or other personal property (including money or personal property for which the employer was responsible), through the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication committed "in any position, any where", during the period commencing with the dates set opposite the names of the employees in the schedule (R. 11).

The demurrer was sustained and Appellant declining to plead further, judgment was rendered against Appellant for the amount of the demand. From that judgment Appellant appealed to the Supreme Court of Mississippi, assigning as error for its reversal the action of the Circuit Court in sustaining the demurrer because the provision of the bond requiring claim thereunder to be made within fifteen months after termination of the suretyship which Appellee had not complied with, was valid under the law of Tennessee, and the law of Tennessee and not the law of Mississippi governed, and the courts of Mississippi had to give full faith and credit thereto and could not apply its statute (Sec. 2294, Code 1930), in view of Article IV, Sec-

tion 1; Article I, Section 10 and Section 1 of the Fourteenth Amendment of the Constitution of the United States (R. 22). The Supreme Court of Mississippi affirmed the judgment of the Circuit Court, holding, in an Opinion appearing in the record beginning on page 23, now reported in 150 So. R. 205, in substance and effect, that the fidelity bond or indemnity contract was entered into and consummated in Tennessee where Appellee and Appellant had their respective offices, and that that was the place of performance, performance being payment of an employee's default (R. 27), but that the contract in providing for indemnity from the defalcation of its Treasurer Harris "in any position, any where", and Appellee and the Treasurer subsequently moving to Mississippi and the default there occurring, was upon an interest in Mississippi and under Section 5131, Code 1930 defining insurance, and providing that "all contracts of insurance on property, lives or interests in this State shall be deemed to be made therein", made it a Mississippi contract and subject to said Section 2294, which section under the Mississippi decisions rendered the fifteen months provision null and void as a limitation of action for a shorter period than the general statute of limitation of six years (R. 27, 26, 28).

It was not expressly stated in the declaration that after the bond was made Appellee moved its office from Memphis to Mississippi and its Treasurer moved with it to Mississippi, but Appellant conceded that that was inferable from the allegations in the declaration.

Section 5131 of the Mississippi Code of 1930 applied by the Supreme Court of Mississippi with the above mentioned result reads as follows:

> "A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the as-

> sured, upon the destruction, loss or injury of something in which the assured or other party has an interest, as an indemnity therefor; and it shall be unlawful for any company to make any contract of insurance upon, or concerning any property or interest or lives in this state, or with any resident thereof; or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance unless and except as authorized under the provisions of this chapter. All contracts of insurance on property, lives or interests in this state shall be deemed to be made therein."

Said Section 2294 which that court applied as a result of its application of Section 5131 striking the fifteen months provision from the contract, reads as follows:

> "The limitations prescribed in this chapter shall not be changed in any way whatsoever by contract between parties, and any change in such limitations made by any contract stipulation whatsoever shall be absolutely null and void; the object of this statute being to make the period of limitations for the various causes of action the same for all litigants."

As will be seen from reading its opinion, the court did not say in terms that the due process clause (Article XIV, Section 1), and the full faith and credit clause (Article IV, Section 1), of the Constitution of the United States did not prevent the application of Sections 5131 and 2294 of the Mississippi Code to the contract and the fifteen months provision therein, but it necessarily so held since those provisions of the Constitution were asserted in Appellant's plea as preventing the application of Section 2294, and were asserted on appeal in its assignment of errors as preventing the application of the Mississippi statute to the contract and the fifteen months provision therein. Appellant after the court's decision asserted

these provisions in a suggestion of error for a rehearing as preventing the application of Sections 5131 and 2294 to the contract in suit, as indicating error in its decision, which suggestion of error was overruled without an opinion (R. 29, 30).

Specification of Assigned Errors Relied Upon.

Appellant assigned as errors in its appeal and relies upon the following:

I.

The Supreme Court of Mississippi erred in holding that under Section 5131 of the Mississippi Code of 1930 that the bond or policy of insurance sued upon, made and to be performed in Tennessee, was to be deemed to have been made in Mississippi and solvable under the laws of Mississippi because upon an interest in Mississippi, and therefore under Section 2294, Mississippi Code of 1930 the provision of said bond or policy that claim thereunder must be made upon the surety within fifteen months after termination of the suretyship, valid under the laws of Tennessee, was null and void because in conflict with the limitation on actions upon such contracts prescribed by the laws of Mississippi, in that said statutes in such construction and application were made repugnant to Article XIV, Section 1 and Article IV, Section 1 of the Constitution of the United States.

II.

The Supreme Court of Mississippi erred in holding that the bond or policy sued upon was upon an interest in the State of Mississippi (R. 30-31).

Summary of Argument.

POINT I.

There being "an interest in Mississippi" with respect to which the contract was made, if there was in truth such an interest, did not warrant the application of the Mississippi statutes to the contract, because the parties had the right to contract with respect thereto in Tennessee and the laws of that state entered into the contract and gave them rights which they and each of them were protected in by the due process clause and the full faith and credit clause of the Constitution.

POINT II.

There was no "interest in Mississippi", in any proper sense, to control the validity of the contract.

ARGUMENT.

POINT I.

There being "an interest in Mississippi" with respect to which the contract was made, if there was in truth such an interest, did not warrant the application of the Mississippi statutes to the contract, because the parties had the right to contract with respect thereto in Tennessee and the laws of that State entered into the contract and gave them rights which they and each of them were protected in by the due process clause and the full faith and credit clause of the Constitution.

As the Court has seen from the statement of the case, the contract provision which the Mississippi Court in its decision attempts to deprive Appellant of, was a right which that Court concedes was actually acquired in Tennessee and was valid there; also that it concedes that the

contract which it was an important part of, was to be performed in Tennessee. As the Court has seen, the Mississippi Court predicates upon the application of Section 5131 to the contract, its right asserted in its decision to deprive Appellant of that provision and right under Section 2294. As the Court has seen, the sole reason for its holding that Section 5131 applies to the contract, is that it was upon an "interest in Mississippi." There is no suggestion that these two corporations did not have the right to contract in Tennessee where both were doing business when the contract was made.

That there was an "interest in Mississippi" was determined, as will be seen, upon the ground that the provision of the contract that Appellee was to be indemnified against its officers' or employees' default committed "in any position, anywhere," and that Appellee moved its offices in which the defaulting Treasurer worked from Tennessee to Mississippi and the Treasurer went to Mississippi with it and there defaulted, materialized that potential interest represented by such provision into an actual "interest in Mississippi." Whether or not an "interest in Mississippi" resulted in that way, will be considered under Point II. Under Point I will be discussed solely whether the contract of insurance being on an interest in Mississippi, which we concede for the purposes of the argument but not further, warranted the Mississippi Court's application of Sections 5131 and 2294 to the contract and the fifteen months' provision.

In *Allgeyer* v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832, this Court held, in effect, that neither the location of the property which the insurance covered nor the citizenship or residence of the contracting parties but the place where the contract was made and to be performed, determined the laws applicable thereto; in other words, that the laws

of the state where the property insured was located and the contracting parties had their citizenship or resided were not applicable by reason thereof to a contract made by the parties and to be performed in another state. In this case the State of Louisiana sued a citizen of that State to recover a penalty under a statute of Louisiana which prohibited the making of an insurance contract of the kind on property in that State, in a company not doing business in the State in compliance with its laws, under penalty of a fine, the defendant, a citizen of the State, having secured coverage under an open marine policy on bales of cotton which he had in the State of Louisiana, in the State of New York with a company that was not qualified to do business in Louisiana, and the Louisiana courts held the defendant liable, and this Court on review, reversed the judgment, holding that the Louisiana statute could not be applied to the act of the parties resulting in a contract in the State of New York, under the right of contract and due process clauses of the Constitution. The "right of contract" clause was the prime influence in that decision, but that decision also necessarily in effect ruled that the location of the property and the residence of the parties securing the contract, did not warrant the application of the Louisiana statute to the acts and the contract resulting therefrom, done in New York.

That has been recognized and adhered to and the idea reenforced in subsequent cases in this Court involving the application of the laws of one state to insurance contracts made in another. *New York Life Ins. Co.* v. *Head*, 234 U. S. 149, 58 L. Ed. 1259; *New York Life Ins. Co.* v. *Dodge*, 246 U. S. 357, 62 L. Ed. 772; *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389, 69 L. Ed. 342; *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 74 L. Ed. 926.

It appears that the only other State in the Union besides Mississippi, having a concluding provision in its

general statute like the concluding clause in Section 5131, *viz*, "All contracts of insurance on property, lives or interests in this State shall be deemed to be made therein," is Massachusetts (32 C. J., p. 979, Sec. 8, p. 980, Notes 69 and 70), and as it happens the Supreme Court of Massachusetts was called upon in the case of *Stone* v. *Old Colony St. Ry. Co.*, 212 Mass. 459, 99 N. E. 218, to determine the applicability of that provision to a contract of casualty insurance made by a street railway company incorporated in that State, in the State of Pennsylvania with a mutual casualty association incorporated under the laws of that State, against casualty liabilities in Massachusetts, in a suit by the receiver of the association to recover additional assessments, in defense of which the Railway Company had set up the invalidity of the contract because not made with a company doing business in the State, and it was contended that the provision in question made the contract a Massachusetts contract and therefore violative of its statute (the statute violated being like the part of Section 5131 preceding the provision in question); and the court held that the statute would not be construed as applying to a contract made in another State, because so to do would be to give it extra territorial operation which the Constitution prohibited. It is not expressly stated in the opinion that the construction contended for was refused because it would be rendered violative of the Federal Constitution, but that is implied by the Court's citation in support of its conclusions of *Johnson* v. *Mutual Life Ins. Co.*, 180 Mass. 407, 62 N. E. 733, 63 L. R. A., 833, in which that is suggested; and *Allgeyer* v. *Louisiana*, 165 U. S. 578, 41 L. Ed. 832. The Court said in part:

> "It is further contended that our courts should not lend their aid for the collection of the assessments. No express legislative prohibition however is found, and the concluding sentence in Sec. 3 of Chap. 522

of the St. of 1894, that 'all contracts of insurance on property, lives or interests in this commonwealth shall be deemed to be made therein,' should not be construed by implication as intended to regulate or prohibit contracts of insurance made in other jurisdictions. *Johnson* v. *Mutual Life Ins. Co. of N. Y.*, 180 Mass. 407, 409, 62 N. E. 733, 63 L. R. A. 833. It is settled that while an insurance broker who in violation of Section 98 solicits insurance in foreign companies which have not been licensed by the insurance commissioner may be prosecuted criminally, state legislation cannot deprive a citizen of the personal right to protect himself from loss, through insurance obtained on his property under a contract made outside of the state of his domicile. *Com.* v. *Nutting*, 175 Mass. 154, 55 N. E. 895, 78 Am. St. Rep. 483; *Nutting* v. *Mass.*, 183 U. S. 553, 22 Sup. Ct. 238, 46 L. Ed. 324; *Pierce* v. *People*, 106 Ill. 11; *Allgeyer* v. *Louisiana*, 165 U. S. 578, 17 Sup. Ct. 427, 41 L. Ed. 832; *Delamater* v. *South Dakota*, 205 U. S. 93, 102, 27 Sup. Ct. 447, 51 L. Ed. 724, 10 Ann. Cas. 733. The general rule, where enforcement of a foreign contract is sought against a party in the courts of his residence, has been stated in these words: 'If it is valid there it is to be deemed valid everywhere, and will stand an action in the courts of a state whose laws do not permit such contracts. *Scudder* v. *Union National Bank*, 91 U. S. 406, (23 L. Ed. 245). Even a contract expressly prohibited by the statutes of the state in which suit is brought, if it is not in itself immoral, is not necessarily nor usually deemed so invalid that the comity of the state as administered by its courts will refuse to entertain an action on such contracts made by one of its citizens brought in a suit in which the laws protect it.' *Milliken* v. *Pratt*, 125 Mass. 374, 375, (28 Am. Rep. 241).''.

In *Johnson* v. *Mutual Life Ins. Co.*, 180 Mass. 407, 62 N. E. 733, 63 L. R. A. 833, that suit was upon a policy of life insurance taken out by one domiciled in Massachusetts, in the State of New Hampshire or New York (it is not

stated in the opinion which), and the effort was made to apply the Massachusetts statute thereto which required a copy of the application referred to in the policy to be annexed to the policy, and the Supreme Court speaking through Judge Holmes, then Chief Justice of the Court, said in reference thereto:

> "Assuming that the proviso has the purpose just stated, such cases as we have seen upon kindred questions show that generally such statutes will be construed as intended to affect only contracts made within the jurisdiction. *Mutual L. Ins. Co.* v. *Cohen*, 179 U. S. 262, 265, 269, 45 L. Ed. 181, 184, 186, 21 Sup. Ct. Rep. 106; *Greisemer* v. *Mutual L. Ins. Co.*, 10 Wash. 202, 207, 38 Pac. 1031. Nothing was said, or could have been decided, in *Considine* v. *Metropolitan L. Ins. Co.*, or *Nugent* v. *Greenfield Life Asso.*, that extended the proviso to policies issued by foreign companies outside the commonwealth. The policies in both these cases were issued in Massachusetts. It would be most unusual for a state to try to regulate the form of contracts made outside of its jurisdiction, not reaching into the jurisdiction in their operation and not necessarily ever coming before its courts. Commonly such an attempt would be, not only impolitic but beyond its power. Probably the power of this state was not increased in that respect by the fact that the present defendant had complied with the laws of Massachusetts, and did business here. *Mutual L. Ins. Co.* v. *Cohen*, 179 U. S. 262, 269, 45 L. Ed. 181, 186, 21 Sup. Ct. Rep. 106, citing *Green* v. *Mutual L. Ins. Co.*, 10 Wash. 207, 38 Pac. 1031; *Belknap* v. *Johnston*, 114 Iowa, 265, 86 N. W. 267. But were it otherwise, we should need clear words or strong grounds of policy before supposing that the legislature had pressed its power to such an extreme. Certainly we should not force an unnatural construction upon plain language in order to reach so unusual a result."

It has been held in the courts of various States in cases in which was involved the application of statutes similar to that involved in *Johnson* v. *Mutual Life Ins. Co., supra,* that they could not be constitutionally applied to insurance contracts made in other States. See *Western Mass. Mut. Fire Ins. Co.* v. *Storage Co.,* 6 Pa. Super. Ct. 288; *Western Mass. Fire Ins. Co.* v. *Hilton,* 58 N. Y. S. 854, 42 App. Div. 52; *French* v. *People,* 6 Colo. App. 311, 40 Pac. 463; *Swing* v. *Hill,* 165 Ind. 411, 75 N. E. 658; *N. Y. Life Ins. Co.* v. *Long,* 177 Ky. 445, 197 S. W. 948; *Hammond* v. *International Ry. Co.,* 116 N. Y. S. 855; *Lumbermen's, etc. Ins. Co.* v. *Kansas City, Ft. S. & M. R. Co.,* 149 Mo. 165, 50 S. W. 281.

In a Note in 1 A. L. R., 1665, it is said:

> "Notwithstanding the broad powers which the states enjoy in respect of the conditions which may be imposed upon foreign insurance companies seeking to do business within their borders, statutes which attempt directly or in effect to forbid or penalize the making of contract of insurance outside the state, to be performed outside the state, upon property within the state or upon the lives of residents of the state, or to make such contracts a subject or source of taxation, have been quite consistently condemned as in violation of the 14th Amendment."

See also Supplemental Note in 32 A. L. R. 636.

The reason for the rule of these cases is doubtless that the contract of insurance is not "intrinsically and inherently local," (*N. Y. Life Ins. Co.* v. *Head,* 234 U. S. 149, 161, 58 L. Ed. 1259, 1264), and corporations as well as individuals where not restricted by laws entering into their charters have the right to contract where ever they may have been admitted to do business, (*Mutual Life Ins. Co.* v. *Cohen,* 179 U. S. 262, 45 L. Ed. 181), and the legality of their acts resulting in the contract and rights thereunder,

are determined and fixed by the laws of the place where done.

The obstacle in the way of the application of the laws of one state to contracts made and to be performed in another is primarily the full faith and credit clause of the Constitution, because such an application would be to set at naught the laws of the state where the contract is made, it being settled that the laws of that state enter into and become part of the contract, (*Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389, 399, 69 L. Ed. 342, 349), and the due process clause of the 14th Amendment, Sec. 1, in combination with it. The idea was expressed by Chief Justice White in *N. Y. Life Ins. Co.* v. *Head*, 234 U. S. 149, 161, 58 L. Ed. 1259, 1264, in the following language:

> "Such question, we think, admits of but one answer, since it would be impossible to permit statutes of Missouri to operate beyond the jurisdiction of that state and in the state of New York, and thereby destroy freedom of contract without throwing down the constitutional barriers by which all the states are restricted within the orbits of their lawful authority, and upon the preservation of which the Government under the Constitution depends. This is so obviously the necessary result of the Constitution that it has rarely been called in question, and hence authorities directly dealing with it do not abound. The principle, however, lies at the foundation of the full faith and credit clause and the many rulings which have been given effect to that clause."

It is respectfully submitted that these authorities amply sustain the contention that an "interest in Mississippi" did not warrant the application of Section 5131 for the purpose of bringing into play Section 2294, under the due process clause and the full faith and credit clause of the Constitution. Indeed, the Supreme Court of Mississippi

should have construed Section 5131 as did the Massachusetts Supreme Court and saved it from repugnancy to those clauses of the Constitution.

In view of the fact that it might be considered that the Mississippi Court suggested the fact of Appellee's removal of its principal office from Tennessee to Mississippi and the occurrence there of the contingency insured or indemnified against, as grounds warranting the application of Sections 5131 and 2294, the sufficiency of that under the authorities will be discussed before passing from the point. It is not perceivable how the removal of Appellee and its Treasurer from Tennessee to Mississippi and the occurrence in Mississippi of the contingency insured against could make the contract made in Tennessee with the Tennessee laws incorporated therein any less a Tennessee contract which Appellant had a valuable right in; in other words, convert it into a Mississippi contract in the face of the full faith and credit clause of the Constitution. The record does not disclose any change in the contract between the parties that could be taken as constituting it a new contract made at that time in Mississippi. It is submitted that it would take some express act on the part of the Appellant to constitute a waiver of the fifteen months provision validly incorporated into the contract under the laws of Tennessee.

It is submitted that this Court's decision in *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389, 69 L. Ed. 342, decided that proposition in accordance with Appellant's contention. In that case there was a suit in a Texas court upon a policy of life insurance which assured, while a resident of Tennessee, secured from the Aetna Life Insurance Company, through its Agency at Nashville, in that State, and subsequently the assured had removed to the State of Texas where he had died, and it appeared that the Aetna Life Insurance Company was doing business in the State of Texas

at the time of assured's death and had been doing business in Texas when the contract with it was made in Tennessee at its agency there, and the Texas Court of Appeals had held, as will be seen by reference to the report of its decision in 248 S. W. 165, that because the Aetna Life Insurance Company was doing business in the State of Texas at the time stated, it had subjected itself to the laws of Texas and the policy was a Texas contract and the Texas statute imposing a penalty for nonpayment within thirty days after demand, applied, and this Court upon review reversed the decision of the Texas court, holding that the contract was a Tennessee contract and that the Texas statute could not be applied thereto without doing violence to the full faith and credit clause of the Constitution of the United States. It is notable that the Texas statute in question contained terms that were about as susceptible of that construction as the Mississippi statute on this theory; *viz*: "Any contract of insurance payable to any citizen or inhabitant of this State by an insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand), should be payable within this State, or at the Home Office of the company or corporation issuing the same."

It has been expressly held in a number of cases in the State courts under life insurance policies that the removal of the assured to and death in another State did not make it a contract of that State subject to its laws. See *U. S. Mortgage & Trust Co.* v. *Ruggles*, 258 N. Y. 32, 179 N. E. 250; *Bowen* v. *Interstate Business Men's Ass'n.*, 182 Wis. 223, 196 N. W. 229. The same is the implication of the deci-

sions of other State courts. See *Gill* v. *Sovereign Camp W. O. W.*, 209 Mo. App. 63, 236 S. W. 1073; *Cleary* v. *Union Central Life Ins. Co.*, 143 Ky. 540, 136 S. W. 1014, 33 L. R. A. N. S. 881; *Union Central Life Ins. Co.* v. *Barnes* (Ky.), 194 S. W. 339; *Dolan* v. *Royal Neighbors*, 123 Mo. App. 54, 100 S. W. 500; *Roberts* v. *Modern Woodmen*, 133 Mo. App., 207, 113 S. W. 726.

Any contention that the Mississippi Courts could refuse to enforce the fifteen months provision in the contract because against the public policy expressed in Section 2294, would be answered and overcome by this Court's ruling in *Home Ins. Co.* v. *Dick*, 281 U. S. 394, 410, 74 L. Ed. 926, 934, the language of the Court being:

> "Dick urges that Article 5545 of the Texas law is a declaration of its public policy; and that a state may properly refuse to recognize foreign rights which violate its declared policy. Doubtless, a State may prohibit the enjoyment by persons within its borders of rights acquired elsewhere which violate its laws or public policy; and, under some circumstances, it may refuse to aid in the enforcement of such rights. *Bothwell* v. *Buckbee, M. Co.*, 275 U. S. 274, 277-279, 72 L. Ed. 277, 279, 280, 48 Sup. Ct. Rep. 124; *Union Trust Co.* v. *Grosman*, 245 U. S. 412, 62 L. Ed. 368, 38 Sup. Ct. Rep. 147; compare *Fauntleroy* v. *Lum*, 210 U. S. 230, 52 L. Ed. 1039, 28 Sup. Ct. Rep. 641. But the Mexican corporation never was in Texas; and *neither it nor the garnishees invoked the aid of the Texas courts or the Texas laws.* The Mexican corporation was not before the court. The garnishees were brought in by compulsory process. Neither has asked favors. They ask only to be let alone. We need not consider how far the State may go in imposing restrictions on the conduct of its own residents, and of foreign corporations which have received permission to do business within its borders; or how far it may go in refusing to lend the aid of its courts to the enforcement of rights ac-

quired outside its borders. It may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." (Italics ours.)

The Appellant here was in the same position in the Mississippi courts as the garnishees were in the Texas courts. It did not seek the aid of the Mississippi courts and was brought in by compulsory process and asked nothing of the Mississippi courts except that its rights in the terms of the contract made in Tennessee be left inviolate.

There is no room on the facts in this record for any contention that the parties went from Mississippi into Tennessee to make their contract in order to circumvent the laws of Mississippi. Appellee had its principal business office in Tennessee and Appellant had an Agency there under its qualification to do business in Tennessee, just as it had in Mississippi, and the Agency in Tennessee had no connection with the Agency in Mississippi.

The provision of Section 5131 under consideration here, can constitutionally be applied to and Section 2294 be brought into operation against objectionable provisions, in contracts actually made in Mississippi with reference to property, lives and interests therein, in which the parties have attempted by stipulation to make the laws of the State of the domicile of the insurer applicable thereto; without doing violence to the full faith and credit clause and the due process clause, but that is as far as it can constitutionally be allowed to go and should be limited to that, it is respectfully submitted

The Mississippi statute, Section 2294, cannot be allowed to strike the fifteen months provision from the bond under the due process clause. In *Home Insurance Co.* v. *Dick* it was expressly held that the laws of Texas could not affect the limitation for action stipulated in the contract, in view

of the due process clause of the Constitution. The Mississippi decision does not really deny this proposition, as it proceeded upon the assumption that Section 5131 made the bond a Mississippi contract and on that account subject to Section 2294, and in consequence it is to be taken that if Section 5131 is inapplicable for that purpose, Section 2294 could not be constitutionally applied to destroy the fifteen months provision. The full faith and credit clause is also involved in view of this Court's ruling in *N. Y. Life Ins. Co.* v. *Head, ante*, wherein it was said that that clause lies at the bottom of the application of the due process clause of the 14th Amendment, in such cases. In *Aetna Life Ins. Co.* v. *Dunken, ante*, it was held that the Texas penalty statute could not be applied to a contract made in Tennessee where there was no such statute, because of the full faith and credit clause, and doubtless upon that principle.

Point II.

There was no "interest in Mississippi", in any proper sense, to control the validity of the contract.

Only in event this Court considers "an interest in Mississippi" sufficient to bring the Mississippi statutes into control of the contract, is it necessary to consider this proposition.

In such event this Court has jurisdiction to determine the question. *Aetna Life Ins. Co.* v. *Dunken*, 266 U. S. 389, 394, 69 L. Ed. 342, 347.

The character of bond involved here is called a fidelity bond or fidelity policy of insurance manifestly because it insures the fidelity of officers and employees. It can be said that the employer has an interest in the fidelity of the employee because of the employment and the risk of loss from the employment, which the employer can insure

against. The location of that interest would be where the officer or employee was serving the employer.

In the case at bar the officer of Appellee whose acts are in question was serving in Appellee's principal business office in the State of Tennessee where the bond was executed, delivered and accepted.

The location of such an insured interest as this, is necessarily at the place where the officer or employer is accountable. The correctness of that is well illustrated by the case of *Matthews* v. *Employers Liability Assurance Corp.*, 111 N. Y. S. 76. In that case an employer in New York took out fidelity insurance in that State on its employees, and one of its employees, a salesman-collector, misappropriated money in Connecticut, and the question was whether the laws of Connecticut or the laws of New York determined whether the act was within the category of those insured against, and it was held that the laws of New York determined.

It is the commission of the act of dishonesty that the provision of the bond, "in any position, anywhere," relates to. It will be seen by reference to the bond (R. 11), that the undertaking therein is "to pay * * * pecuniary loss * * * sustained * * * through the fraud * * * committed * * * in any position, anywhere." That provision, therefore, manifestly does not refer to money or property which might be lost through fraud, etc., as the Mississippi Court seemed to think.

Aware of the fact that the "interest" insured was necessarily in Tennessee at the time of the making of the contract, the Mississippi Court brought in the fact of Appellee and its officers' subsequent removal to Mississippi, as necessary to take the interest into Mississippi. But as has been seen from the authorities cited, those facts did not change the contract and make the interest one in Mississippi

which warranted its being considered a Mississippi contract and subject to the laws of that State.

Conclusion.

Wherefore, it is respectfully submitted on behalf of Appellant that the decision of the Supreme Court of Mississippi is erroneous and should be reversed with directions.

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(4542-C)